

ENVIRONMENTAL PROTECTION ACT 1990

Duty of care etc. as respects waste

34.

1. Subject to subsection (2) below, it shall be the duty of any person who imports, produces, carries, keeps treats or disposes of controlled waste or, as a broker, has control of such waste, to take all such measures applicable to him in that capacity as are reasonable in the circumstances.

a) to prevent any contravention by any other person of section 33

b) to prevent the escape of waste from his control or that of any other person, and

c) on the transfer of waste to secure

i) that the transfer is only to an authorised person or to a person for authorised transport purposes: and

ii) that there is transferred such a written description of the waste as will enable other persons to avoid a contravention of that section and to comply

with the duty under this subsection as respects the escape of waste.

2. The duty imposed by subsection (1) above does not apply to an occupier of domestic property as respects the household waste produced on the property.

3. The following are authorised persons for the purpose of subsection (1)(c) above:-

a) any authority which is a waste collection authority for the purposes of this Part.

b) any person who is the holder of a waste management licence under section 35 or of a disposal licence under section 5 of the Control of Pollution Act 1974;

c) any person to whom section 33 (1) above does not apply by virtue of regulations under subsection (3) of that section;

d) any person registered as a carrier of controlled waste under Section 2 of the Control of Pollution (Amendment) Act 1989;

e) any person who is not required to be so registered by virtue of regulations under section 1(3) of that Act; and

f) a waste disposal authority in Scotland

4. The following are authorised transport purposes of subsection (1)(c) above:-

a) the transport of controlled waste within the same premises between different places in those premises;

b) the transport to a place in Great Britain of controlled waste which has been brought from a country or territory outside Great Britain not having been

landed in Great Britain until it arrives at that place, and

c) the transport by air or sea of controlled waste from a place in Great Britain to a place outside Great Britain;

And "transport" has the same meaning in this subsection as in the Control of Pollution (Amendment) Act 1989.

5. The Secretary of State may, by regulations, make provision imposing requirements on any person who is subject to the duty imposed by subsection (1)

above as respects the making and retention of documents and the furnishing of documents or copies of documents.

6. Any person who fails to comply with the duty imposed by subsection (1) above or with any requirement imposed under subsection (5) above shall be liable

a) on summary conviction, to a fine not exceeding the statutory maximum, and

b) on conviction on indictment, to a fine.

7. The Secretary of State shall, after consultation with such persons or bodies as appear to him representative of the interests concerned, prepare and issue a

code of practice for the purpose of providing to persons practical guidance on how to discharge the duty imposed on them by subsection (1) above.

8. The Secretary of State may from time to time revise a code of practice issued under subsection (7) above by revoking, amending or adding to the provision

of the code.

9. The code of practice prepared in pursuance of subsection (7) above shall be laid before both Houses of Parliament.

10. A code of practice issued under subsection (7) above shall be admissible in evidence and if any provisions of such a code appears to the court to be

relevant to any question arising in the proceedings it shall be taken into account in determining that question.

11. Different codes of practice may be prepared and issued under subsection (7) above for different areas